

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Herbert Jack Breite, M.D.

)
)
)
)
Docket No. MPC 32-0303

STIPULATION AND CONSENT ORDER

NOW COME Herbert Jack Breite, (hereinafter "Respondent") and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and agree and stipulate to the following:

1. Respondent holds Vermont Medical License number 042-0005403, issued on November 19, 1974.
2. Jurisdiction in this matter vests with the Vermont Board of Medical Practice ("Board") by virtue of 26 V.S.A. §§ 1353, 1354, 1361, and 1398.

I. Background.

3. This matter came before the Board on March 12, 2003 based on information provided by the internet clearinghouse of the Federation of State Medical Boards. Such information alleged that Respondent had prescribed 3 Viagra tablets to a patient based solely on information provided by the patient by filling out an on-line form from an "internet pharmacy".

4. Board personnel investigated the allegations against Respondent. On June 4, 2003, on the State's motion, the Board of Medical Practice entered an order summarily suspending Respondent's license to practice medicine in the State of Vermont. On June 25, 2003, the State filed a specification of charges against Respondent, based on the Board's investigation. The State's charges alleged, inter alia, that Respondent failed to perform a physical examination of the patient and failed take a medical history from the patient prior to prescribing Viagra for him.

II. Respondent's Licensure Status and Practice Activities.

5. Respondent has represented through counsel and reiterates here that he holds medical licensure only in the State of Vermont and the Commonwealth of Pennsylvania. Respondent has represented and reiterates here that his Pennsylvania medical license (License No. MD034606L) is designated as "active—retired".

A. Vermont.

6. Respondent represents that he has never practiced medicine in the State of Vermont and holds no privileges in this State. Respondent represents that he has no present or future need of a Vermont medical license and shall not practice here at any time in the future.

B. Pennsylvania.

7. Respondent represents that he has retired from any practice of medicine pursuant to the medical license issued to him by the Commonwealth of Pennsylvania and no longer practices medicine in Pennsylvania. Respondent represents that since retiring from the practice of medicine approximately seven years ago he has had no private medical office in Pennsylvania, or elsewhere, and has had no medical malpractice insurance coverage. Respondent executed on June 15, 2003 a Form DEA-104 (Voluntary Surrender of Controlled Substances Privileges), pursuant to 21 CFR § 1301.1 and Section 301 of the Controlled Substances Act of 1970, and thereby surrendered his Federal Drug Enforcement Administration Certificate of Registration and right to dispense or prescribe controlled substances.

C. Respondent's Retired Status.

8. Respondent represents that he has permanently retired from any and all practice of medicine in any and all locations. Without reservation, Respondent represents that he does not intend to and shall not return to the practice of medicine. Respondent represents here that his retirement from the practice of medicine is permanent and irrevocable.

D. Respondent's Cooperation.

9. Respondent has cooperated fully with the Board's investigation and through counsel has maintained ongoing communication with the State regarding resolution of this matter.

III. Surrender of Vermont Medical License.

10. Respondent wishes to assist the Vermont Board of Medical Practice in carrying out its public duties. Respondent agrees that the facts set forth in paragraphs 3 through 9, above, are true and accurate and agrees that the Board of Medical Practice may rely on the facts set forth therein in its review of this agreement.

11. Respondent carefully has considered the Specification of Charges that have been filed by the State of Vermont in this matter, pursuant to 26 V.S.A. §§ 1354, 1355, 1356 & 1398. Respondent enters no admission here but has determined that he will not contest the State's charges in the interest of expeditiously resolving this matter and assisting the Board. He agrees that had this matter proceeded to hearing and had the State satisfied its evidentiary burden, that an order adverse to him could have been entered by the Board under 26 V.S.A. §§ 1354 and/or 1398.

12. Respondent agrees and understands that by executing this document he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with the evidence against him, and to receive a hearing and opportunity to offer evidence of his own to contest the allegations by the State. 26 V.S.A. § 1356; 3 V.S.A. §§ 809 & 814.

13. In sum and in light of his retirement from the practice of medicine Respondent has determined that it is now appropriate for him voluntarily to enter into the terms and conditions of this Stipulation and Consent Order, as set forth below.

IV. Express Terms as to Surrender of Medical License.

14. Respondent acknowledges that he is voluntarily entering into this agreement with the Vermont Board of Medical Practice. Respondent agrees that at all times and in all communications and proceedings related to this matter he has been represented by and advised by counsel, including counsel in reviewing and considering this Stipulation and Consent Order. Respondent agrees that he is fully satisfied with all legal representation he has received.

15. Respondent wishes to resolve expeditiously with the Vermont Board of Medical Practice the matter now pending before the Board. Respondent has retired and has determined that he has no further need or intention to engage in the practice of medicine. In light of his retirement and in lieu of the time, expense, and uncertainty of any public hearing in this matter Respondent has determined that he shall voluntarily and forthwith SURRENDER to the Vermont Board of Medical Practice his license to practice medicine in the State of Vermont, upon approval of this agreement by the Board. Such surrender shall include prompt return to the Vermont Board of Medical Practice his wall certificate of licensure and the wallet card issued to him by the Board. Following the effective date of this agreement, Respondent's license to practice medicine in this State shall be wholly void and without effect. Respondent understands and agrees that his action of license surrender to the Vermont Board of Medical Practice shall be final and irrevocable.

16. Respondent voluntarily agrees that at no time hereafter shall he seek licensure, reinstatement, or relicensure as a physician in the State of Vermont, regardless of circumstances or the passage of time. Respondent expressly agrees that the Board may and shall return to him, without action or obligation of due process of any kind, any application, motion, or petition from him for licensure, reinstatement, or relicensure.

17. Respondent further voluntarily agrees that at no time hereafter shall he seek to change the designation of his Pennsylvania medical license from the present "active--retired" designation in light of his voluntary, final, and irrevocable retirement from the practice of medicine. Respondent warrants that he has no need to and shall not seek to renew his Pennsylvania medical license licensure following its expiration in 2004. Further, Respondent agrees that following the effective date of this agreement he shall not seek medical licensure or practice privileges in any other jurisdiction or with any entity.

18. The Vermont Board of Medical Practice agrees that upon Respondent's execution of this Stipulation and Consent Order and pursuant to its terms, the matter involving him that is currently open before the Board shall be administratively closed by the Board and the State's Specification of Charges dismissed without prejudice. Thereafter, the Board will take no further action on this matter, absent non-compliance with the terms and conditions of this document by Respondent or the receipt of new information or evidence that might warrant further action by the Board. 26 V.S.A. §§ 1355, 1361, 1398.

19. This Stipulation and Consent Order is conditioned upon its acceptance by the Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be deemed null and void. Respondent acknowledges and understands that this Stipulation and Consent Order is a matter of public record, will become part of his permanent Board file, will constitute an enforceable legal agreement, and may be reported to other licensing authorities. In exchange for the actions by the Board, as set forth herein, Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

20. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board of Medical Practice, the Board may enter an order implementing the terms and conditions herein and accepting the final

and irrevocable SURRENDER of the Vermont license to practice medicine of Respondent,
Herbert Jack Breite, M.D.

Dated at Montpelier, Vermont, this 5th day of August 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at Wayne, N.J., this 4th day of August 2003.

Herbert Jack Breite, M.D.
HERBERT JACK BREITE, M.D.
Respondent

Dated at Wayne, N.J., this 4th day of August 2003.

Harley D. Breite, Esq.
HARLEY D. BREITE, ESQ
Counsel for Respondent

FOREGOING, AS TO HERBERT JACK BREITE, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Katherine M. Peadar
Sharon L. Heald
Robert A. L...
James C. Blum...
John B. Weber

W. J. Waller Jr. M.D.
Will Coe

DATED: _____

ENTERED AND EFFECTIVE: _____

HERBERT JACK BREITE, M.D.; 04/08; Stipulation and Consent Order; Subject to Review and Approval by the Vermont Board of Medical Practice